

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
KEENHOLD ASSOCIATES, <i>ET AL.</i>,)	DOCKET No. TSCA-03-2007-0084
)	
Respondents.)	

DEFAULT ORDER AND INITIAL DECISION

This proceeding was instituted on March 30, 2007, by the Director of the Waste and Chemicals Management Division, United States Environmental Protection Agency, Region III (“Complainant” or “EPA”), pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). The Complaint alleges in 28 counts that the five named Respondents - Keenhold Associates, Richard E. Keenhold, Sr., Richard E. Keenhold, Jr., Rosalie Keenhold and Danny Keenhold, in various combinations – committed a total of 56 violations of Section 409 of TSCA, 15 U.S.C. § 2689, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Act”), 42 U.S.C. § 4852d, and the Federal regulations promulgated thereunder, codified at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). Specifically, the Complaint alleges that one or more of the Respondents as named or jointly trading as “Boro Coal,” own six residential dwellings identified as 45 8th Street, Wind Gap, Pennsylvania; 250 Broadway Street, Wind Gap, Pennsylvania; 403-C and 403-D Lamp Light Estates, Brodheadsville, Pennsylvania; 606-608 Northampton, Easton, Pennsylvania; and Lot 29 Hill Top Acres in Saylorsburg, Pennsylvania. The Complaint alleges further that those dwellings were constructed prior to 1978; that Respondents, as “lessors” and “owners,” entered into a total of seven written leases for the dwellings through their “agent,” Respondent Keenhold Associates; that the dwellings are “target housing,” and that Respondents failed to make the legally required disclosures concerning lead based paint to their prospective lessees.¹ The Complaint proposes

¹In brief, Counts 1-7 allege that Respondents as Lessors failed to include in each of the seven leases a Lead Warning Statement in violation of 40 C.F.R. § 745.113(b)(1); Counts 8-14 allege that Respondents as Lessors failed to include in each of the seven leases a lead-based paint disclosure statement in violation of 40 C.F.R. § 745.113(b)(2); Counts 15-21 allege that Respondents as Lessors failed to include in each of the seven leases a list of available records or reports provided on lead-based paint in the premises in violation of 40 C.F.R. § 745.113(b)(3); and Counts 22-28 allege that Respondents as Lessors failed to include in the seven leases an affirmation of receipt of the lead hazard information pamphlet in violation of 40 C.F.R. § 745.113(b)(4). In addition, for each such

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that an aggregate penalty of \$20,800 be imposed against the Respondents for their violations.

On or about May 31, 2007, Respondents, through counsel, jointly filed an Answer to the Complaint. In their Answer, Respondents denied that one of the properties at issue (606-608 Northampton Street) was residential and thus subject to the provisions of 40 C.F.R. Part 745. Respondents otherwise admitted that “Respondent Agent” Keenhold Associates entered into the various leases and that it, and they, as “Respondent Lessors,” failed to “initially” provide the alleged notifications and disclosures as required. However, Respondents asserted that they immediately came into compliance upon being advised by EPA of the requirement to do so. Respondents further requested a hearing on the matter. On or about June 13, 2007, the Regional Hearing Clerk referred the case to the Office of Administrative Law Judges (OALJ) for the purposes of assigning a presiding judge for hearing.

Thereafter, the parties were offered, and accepted, an opportunity to participate in OALJ’s Alternative Dispute Resolution (ADR) process. The parties participated in ADR from June 30, 2007 until August 30, 2007, when the Neutral Judge reported that settlement efforts had been unsuccessful. Thereafter, the undersigned was designated to preside over this matter.

On September 10, 2007, the undersigned issued a Prehearing Order requiring the Complainant to file its Initial Prehearing Exchange on or before September 28, 2007; Respondents to file their Initial Prehearing Exchange(s) on or before October 12, 2007; and permitting Complainant to file a rebuttal prehearing exchange on or before October 26, 2007. The Prehearing Order further stated:

The Respondents are hereby notified that their failure to either comply with the prehearing exchange requirements set forth herein or to state that they are electing only to conduct cross-examination of the Complainant’s witnesses can result in the entry of a default judgment against them.

Prehearing Order of September 10, 2007 at 4-5 (bold in original).

In accordance with the Prehearing Order, on September 28, 2007, Complainant filed its Initial Prehearing Exchange, identifying one witness and 24 exhibits (hereinafter cited as “C’s Ex. __”) as well as providing other information responsive to the Prehearing Order.

On October 1, 2007, counsel for Respondents filed a Notice of Withdrawal of

¹(...continued)

violation the Complaint also includes as Counts 1A-28A a corollary violation against Respondent Keenhold Associates as the Lessors’ “Agent” for failing to assure their compliance with the aforementioned regulatory requirements in violation of 40 C.F.R § 745.115(a)(2) .

Appearance.²

On October 12, 2007, Complainant filed a Motion for Extension of Time to file its Rebuttal Prehearing Exchange noting that none of the Respondents had filed a Prehearing Exchange in accordance with the Prehearing Order. Additionally, Complainant noted that it had been advised that Respondent, Keenhold Associates, a Pennsylvania partnership, had filed for bankruptcy.³

In response to this Motion and the Respondents' failure to file their prehearing exchanges or otherwise respond to the Prehearing Order, on October 16, 2007, the undersigned issued an Order to Show Cause and Order Granting Motion for Extension of Time. That Order required that, on or before October 31, 2007, Respondents show good cause why they failed to submit their Prehearing Exchanges in a timely manner and "why a default should not be entered against [them in] accordance with 40 C.F.R. § 22.17(a)." The Order also advised Respondents that it was well established that filing a Petition for Bankruptcy under Chapter 11 of the Bankruptcy Code (11 U.S.C. § 362(b)(4)) did not stay an administrative penalty action seeking entry of judgment for past violations of environmental regulations.

To date, none of the Respondents have responded in any way to the Show Cause Order or the Prehearing Exchange Order issued by this Tribunal.⁴

Section 22.17(a) of the Consolidated Rules of Practice provides that:

A party may be found to be in default: . . . upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of respondent's right to contest such factual allegations. . . .

² The counsel's Notice also advised that "[a]ll further communications to Respondents should be addressed to Richard E. Keenhold, Jr., Keenhold Associates, 215-A West 8th Street, Wind Gap, Pennsylvania 18091."

³ Court records subsequently accessed by this Tribunal confirmed that Keenhold Associates had filed a Petition under Chapter 11 with the U.S. Bankruptcy Court for the Eastern District of Pennsylvania on September 18, 2007 (case no. 0721594), but that the four named individual Respondents had not.

⁴ The Show Cause Order was served upon Respondents by certified mail to the address indicated in their prior counsel's Notice of Withdrawal, and the return receipt (green card) indicates that it was received and signed for by "R. Keenhold" on October 19, 2007.

40 C.F.R. § 22.17(a).

Section 22.17(c) of the Consolidated Rules of Practice provides that:

When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. . . .

40 C.F.R. § 22.17(c).

Based upon the Respondents' failure to respond to the Prehearing Order and Order to Show Cause issued by the Tribunal, Respondents are hereby found to be in default.

The following Findings of Fact and Conclusions of Law are based upon the Complaint, Respondents' Answer thereto, Complainant's Prehearing Exchange, and other documents of record in the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Respondents

1. Respondent Keenhold Associates is a Pennsylvania partnership with the following partners: Richard E. Keenhold, Sr., Danny Keenhold, and Richard E. Keenhold, Jr. (Complaint ¶ 17, Answer ¶ 17, C's Ex. 3).
2. The four individual Respondents - Richard E. Keenhold, Sr., Richard E. Keenhold Jr., Rosalie Keenhold, and Danny Keenhold, are related to each other by blood or marriage. Richard E. Keenhold, Sr. is the father of Danny A. Keenhold and Richard E. Keenhold, Jr., and Richard E. Keenhold Jr. and Rosalie Keenhold are husband and wife. (C's Exs. 1 and 16).

Lease #1 for 45 8th Street, Wind Gap, Pennsylvania

3. The premises identified as 45 8th Street, Wind Gap, Pennsylvania is a three bedroom single family residential housing unit built in or about the year 1900. C's Exs. 1a, 1b and 6.

4. At the time relevant hereto (March 29, 2004), Richard E. Keenhold, Jr. was the owner of 45 8th St., Wind Gap, Pennsylvania C's Exs. 1b and 14.⁵
5. On or about March 29, 2004, Respondent "**Keenhold Associates PTR**" identified as "the **Owner**" entered into a one year written Lease Agreement with a lessee, for the premises identified as 45 8th Street, Wind Gap, Pennsylvania ("Lease #1"). C's Ex. 1a (italics and bold in original), Complaint ¶ 25, Answer ¶ 25.⁶

Lease #2 for 250 Broadway, Wind Gap, Pennsylvania

⁵This finding is based upon C's Ex. 1b, a computer report allegedly generated in regard to the property from "RealQuest.com" on September 18, 2007, which indicates that since 2002 the premises have been owned by "Richard E. Keenhold, Jr." I recognize that this finding is inconsistent with the Complaint which alleges at ¶ 20 (Chart) that the owner of this property is "Boro Coal," a trade name used by the four individual Respondents for the purchase of certain residential property. Further, I note that in support of its allegation, Complainant includes as Ex.1 in its Prehearing Exchange a document it identifies as the "Deed" for 45 8th Street showing that on September 21, 2004 (*after the transaction at issue here*) the four individual Respondents "t/a Boro Coal" transferred *some* property on 8th Street to "Danny A. Keenhold and Richard E. Keenhold, Jr." However, nothing in that Deed identifies the property being conveyed therein as number "45" on 8th Street and the evidence of record indicates that Respondents own a number of parcels of property situated on 8th Street in Wind Gap, Pennsylvania. *See*, C's Exs.1, 6 and 14. Further, the County Uniform Tax Parcel Identifier Number in the Deed and RealQuest Report do not match (whereas those for others proffered in this case do - *see e.g.*, C's Exs. 2 and 2b). *Compare*, C's Exs. 1 and 1b. Moreover, the information in that Deed indicates that the property being transferred was acquired by the three male Keenhold Respondents trading as ("t/a") Boro Coal from the Lessigs in 1982; however, this is inconsistent with the data in the RealQuest.com printout which indicates that none of the Respondents owned the property until it was bought in 2002 by Richard E. Keenhold, Jr. from Anthony Cortez via an Executor's Deed. *Id.* On the other hand, this 2002 acquisition date for the 45 8th Street property is consistent with Respondents' representation as to when the property was acquired contained in its March 25, 2005 response to EPA's TSCA Subpoena. *See*, C's Exs. 13 and 14. Moreover, the record does contain a portion of 1982 Deed from the Lessigs to the three male Respondents "t/a Boro Coal" for property on 8th Street but that Deed also does not specifically identify the premises being transferred and suggests the transfer prior to it occurred in 1968, which is inconsistent with the RealQuest Report. *See*, C's Ex. 16.

⁶This Lease Agreement and all others at issue here appear to consist of the same printed form created for or by "Keenhold Associates PTR" initially in 2001 and subsequently nominally modified and completed by hand as necessary to memorialize each individual lease transaction. Each such lease regardless of the specific premises involved identifies in printed type that the property is being leased to the tenant by "**Keenhold Associates PTR**" as the "**Owner**." *See*, C's Exs. 1a, 2a, 3a, 3b, 3c, 4a, and 5a (italics and bold in original).

6. The premises identified as 250 [South] Broadway, Wind Gap, Pennsylvania is a three bedroom single family residential housing unit built in or about the year 1900. C's Exs 2a, 2b, 6.⁷
7. At the time relevant hereto (May 1, 2005), Danny A. Keenhold and Richard E. Keenhold, Jr., as tenants in common, were the owners of 250 South Broadway, Wind Gap, Pennsylvania. C's Exs. 2, 2b, 14.
8. On or about May 1, 2005, Respondent "***Keenhold Associates PTR***" identified as "the ***Owner***" entered into a one year written Lease Agreement with a lessee, for the premises identified as 250 South Broadway, Wind Gap, Pennsylvania ("Lease #2"). C's Ex. 2a (italics and bold in original), Complaint ¶ 28, Answer ¶ 28.

Lease #3 for 403C Lamp Light Estates, Brodheadsville, Pennsylvania

9. The premises identified as 403C Lamp Light Estates, Brodheadsville, Pennsylvania, is a residential housing unit built in 1975. C's Exs. 3, 3a and 7a.
10. At the time relevant hereto (March 1, 2005), Richard E. Keenhold, Jr., was the owner of 403-C Lamp Light Estates, Brodheadsville, Pennsylvania. C's Exs. 3 and 14.⁸
11. On or about March 1, 2005, Respondent "***Keenhold Associates PTR***" identified as "the ***Owner***" entered into a one year written Lease Agreement with a lessee, for the premises identified as 403C Lamp Light Estates, Brodheadsville, Pennsylvania ("Lease #3"). C's Ex. 3a (italics and bold in original), Complaint ¶ 31, Answer ¶ 31.

Leases #s 4 and 5 for 403D Lamp Light Estates, Brodheadsville, Pennsylvania

⁷All the exhibits provided by Complainant in relation to this property indicates that the correct street address for this property is "250 *South* Broadway," not "250 Broadway *Street*" as indicated in the Complaint. *See*, C's Exs. 2, 2a, 2b, and 6.

⁸As proof of Richard E. Keenhold, Jr.'s ownership of this property at the relevant times, Complainant proffers a Deed dated February 1, 1993 transferring title to the property known as "lot No. 2 on Subdivision Plan entitled Lamplight Estates" in Chestnuthill Township from the three male Keenhold Respondents trading as Keenhold Associates (as joint Grantors) solely to "Richard E. Keenhold, Jr." (as sole Grantee). C's Ex. 3. This Deed indicates that the Grantors acquired the property in 1990, which is consistent with Respondent Keenhold Associates' representation as to when the Respondents acquired the properties known as "403 A-D Lamp Light Estates." *See*, C's Ex. 14.

12. The premises identified as 403D Lamp Light Estates, Brodheadsville, Pennsylvania is a residential housing unit built in 1975. C's Exs. 3b and 7.
13. At the times relevant hereto (May 1, 2003 and May 1, 2005), Richard E. Keenhold, Jr., was the owner of 403D Lamp Light Estates, Brodheadsville, Pennsylvania. C's Exs. 3 and 14.⁹
14. On or about May 1, 2003, Respondent "***Keenhold Associates PTR***" identified as "the ***Owner***" entered into a one year written Lease Agreement with a lessee, for the premises identified as 403D Lamp Light Estates, Brodheadsville, Pennsylvania ("Lease #4"). C's Ex. 3b (italics and bold in original); Complaint ¶ 34, Answer ¶ 34.
15. On or about May 1, 2005, Respondent "***Keenhold Associates PTR***" identified as "the ***Owner***" entered into a one year written Lease Agreement with a lessee, for the premises identified as 403D Lamp Light Estates, Brodheadsville, Pennsylvania ("Lease #5"). C's Ex. 3c (italics and bold in original), Complaint ¶ 37, Answer ¶ 37.¹⁰

Lease # 6 for 606-608 Northampton Street, Easton, Pennsylvania

16. The premises identified as 606-608 Northampton Street, Easton, Pennsylvania is a residential housing unit built in 1920.¹¹ C's Exs. 4 and, 6.
17. At the time relevant hereto (August 25, 2004), "Richard E. Keenhold, Jr., Richard E. Keenhold, Sr., and Danny Keenhold, co-partners trading as Keenhold Associates," were the owners of the 606-608 North Hampton Street, Easton, Pennsylvania premises. C's

⁹See footnote 8 above.

¹⁰The printed portion of the Lease Agreement dates it as 2001, but the handwritten notation suggests it was executed in 2005. C's Ex. 3c.

¹¹In their unsworn Answer, Respondents denied the allegation in the Complaint that this property was "target housing" covered by the Disclosure Rule and specifically alleged that it is not "a residence" and therefore not subject to such Rule. Complaint ¶ 40; Answer ¶¶ 20-24, 40-42. However, the Deed for the property describes it as a "double three story brick dwelling house." See, C's Ex. 4. Moreover, the Lease Agreement entered into for the property by Keenhold Associates on August 25, 2004 explicitly states that the premises are being leased "for **RESIDENTIAL USE ONLY**," that it comes with a range and refrigerator, and that "All appliances Grill [undecipherable] system etc Belong to Landlord." C's Ex. 4 (capitals and bold in original). Nothing in the Lease indicates that the property was intended to be occupied for any purpose other than as a residence. Respondents were specifically given the opportunity in the Prehearing Order to provide evidence in support of their claim that this property was not a residential dwelling, but as indicated above chose not to submit such evidence.

Ex. 4.

18. On or about August 25, 2004, Respondent “***Keenhold Associates PTR***” identified as “the ***Owner***” entered into a one year written Lease Agreement with a lessee, for the premises identified as 606-608 Northampton Street, Easton, Pennsylvania (“Lease #6”). C’s Ex. 4a (italics and bold in original).

Lease #7 for Lot 29 Hill Top Acres Saylorsburg, Pennsylvania

19. The premises identified as Lot 29 Hill Top Acres, Saylorsburg, Pennsylvania contains a 5 room, 1½ bath, “modular home” built in 1968. C’s Exs. 5a, 5 and 7a.
20. At the time relevant hereto (April 1, 2003), “Richard E. Keenhold, Sr., Richard E. Keenhold, Jr., and Danny A. Keenhold, t/a Keenhold Associates,” were the owners of the Lot 29 Hill Top Acres, Saylorsburg, Pennsylvania premises. C’s Exs. 5, 7, 7a, 14.
21. On or about April 1, 2003, Respondent “***Keenhold Associates PTR***” identified as “the ***Owner***” entered into a one year written Lease Agreement with a lessee, for the premises identified as Lot 29 Hill Top Acres, Saylorsburg, Pennsylvania (“Lease #7”). C’s Ex. 5a (italics and bold in original), Complaint ¶ 43, Answer ¶ 43.

Respondents’ Lessor Violations

22. For the purposes of the Disclosure Rule, the term "target housing" means “any housing constructed prior to 1978.” 42 U.S.C. § 4851b(27); 40 C.F.R. § 745.103.
23. Each of the six properties at issue in this proceeding are “target housing” within the meaning of 42 U.S.C. § 4851b(27) and 40 C.F.R. § 745.103.
24. The Disclosure Rule provides in pertinent part that:

(b) Lessor requirements.¹² Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

¹²For the purposes of the Disclosure Rule, “Lessor” is defined as “any entity that offers target housing for lease, rent or sublease, including but not limited to individuals [and] partnerships” and “Owner” is defined as “any entity that has legal title to target housing, including but not limited to individuals [and] partnerships.” 40 C.F.R. § 745.103. Owners of property become Lessors, burdened by the obligations of the Disclosure Rule, upon entering into lease transactions for their property. See, *Harpoon Partnership*, 12 E.A.D. 182 (EAB 2005).

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

40 C.F.R. § 745.113(b)(1)-(4) .

25. As alleged in Counts 1-7 of the Complaint, a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), was neither attached to, nor included within, each of the seven lease transactions (Leases 1-7). Complaint ¶ 47, Answer ¶ 47.
26. As alleged in Counts 8-14 of the Complaint, a Statement disclosing the presence of known lead-based paint as required by 40 C.F.R. § 745.113(b)(2), was neither attached to, nor included within, each of the seven lease transactions (Leases 1-7). Complaint ¶ 52, Answer ¶ 52.
27. As alleged in Counts 15-21 of the Complaint, a list of available records and report pertaining to lead-based paint as required by 40 C.F.R. § 745.113(b)(3), was neither attached to, nor included within, each of the seven lease transactions (Leases 1-7). Complaint ¶ 57, Answer ¶ 57.
28. As alleged in Counts 22-28 of the Complaint, a Statement of the lessee affirming receipt of lead hazard information pamphlet as required by 40 C.F.R. § 745.113(b)(4), was

neither attached to, nor included within, each of the seven lease transactions (Leases 1-7). Complaint ¶ 62, Answer ¶ 62.

29. The failure of the respective Lessors to include the four aforementioned statements and/or lists in each of the seven lease transactions as required 40 C.F.R. § 745.113(b) constitutes 28 violations of Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5)), and Section 409 of TSCA, 15 U.S.C. § 2689.
30. Therefore, the following Respondents are found liable as follows:
 - A. Respondent Richard E. Keenhold, Jr., as the sole owner/lessor of the premises identified as 45 8th Street, Wind Gap, Pennsylvania, is found liable for four violations committed in connection with Lease #1 relating to that property;
 - B. Respondents Richard E. Keenhold Jr. and Danny Keenhold, as the joint owners/lessors of the premises identified as 250 South Broadway, Wind Gap, Pennsylvania, are found jointly and severally liable for four violations committed in connection with Lease #2 relating to that property;
 - C. Respondent Richard E. Keenhold, Jr., as the sole owner/lessor of the premises identified as 403C Lamp Light Estates, Brodheadsville, Pennsylvania, is found liable for four violations committed in connection with Lease #3 relating to that property;
 - D. Respondent Richard E. Keenhold, Jr., as the sole owner/lessor of the premises identified as 403D Lamp Light Estates, Brodheadsville, Pennsylvania, is found liable for eight violations committed in connection with Leases #4 and #5 relating to that property;
 - E. Respondents Richard E. Keenhold, Jr., Richard E. Keenhold, Sr., and Danny Keenhold, co-partners t/a Respondent Keenhold Associates, as the co-owners/lessors of the premises identified as 606-608 Northampton Street, Easton, Pennsylvania, are found jointly and severally liable for the four violations committed in connection with Lease #6 relating to that property;
 - F. Respondents Richard Keenhold, Jr., Richard Keenhold, Sr., and Danny Keenhold t/a Respondent Keenhold Associates, as the co-owners/lessors of the premises identified as Lot 29 Hill Top Acres, Saylorsburg, Pennsylvania, are found jointly and severally liable for the four violations committed in connection with Lease #7 relating to that property; and
 - G. Respondent Rosalie Keenhold, being found to not be an owner/lessor individually or with others of any of the properties at issue at the time the subject leases (Leases # 1-7) were entered into, is found not liable on any count of violation.

Keenhold Associates' Agent Liability

31. At all times relevant hereto, Respondent Keenhold Associates was a Pennsylvania partnership with the individual three male Respondents - Richard E. Keenhold, Jr., Richard E. Keenhold, Sr., and Danny Keenhold, as co-partners. *See*, C's Exs. 3, 15 and 16.
32. "Richard E. Keenhold, Jr., Richard E. Keenhold, Sr., and Danny Keenhold [co-partners] trading as [or t/a] Keenhold Associates" were the named lessors/owners of the two premises identified herein as 606-608 Northampton Easton, Pennsylvania and Lot 29 Hill Top Acres, Saylorsburg, Pennsylvania at the time relevant hereto. *See*, C's Exs. 4 and 5.
33. A Keenhold Associates partner, Respondent Richard E. Keenhold, Jr., is the individual named lessor/owner of the three premises identified as 45 8th Street Wind Gap, Pennsylvania and 403C and 403D Lamp Light Estates, Brodheadsville, Pennsylvania, as well as the co-owner with Keenhold Associates co-partner, Danny Keenhold, of the premises identified as 250 South Broadway, Wind Gap, Pennsylvania, at the times relevant hereto. C's Exs. 1b, 2, and 3.
34. The evidence of record indicates that Respondent Richard E. Keenhold, Jr. has individually traded as "Keenhold Associates" or is identified as the "owner" of Keenhold Associates. *See*, C's Exs. 2, 8.
35. Each of the leases at issue identified the parties thereto as the Tenant and "**Keenhold Associates PTR**" as the "**Owner**." *See*, C's Exs. 1a, 2a, 3a, 3b, 3c, 4a, and 5a (italics and bold in original).
36. The record evidences suggests that the Respondent Richard Keenhold, Jr. may have (alone) signed all the various lease agreements at issue on behalf of "Keenhold Associates, PTR" as "Owner." C's Exs. 15 and 16.
37. The Disclosure Rule at 40 C.F.R. § 745.115 provides that "Each Agent shall . . . ensure that the seller or lessor has performed all activities required under § . . . 745.113, or personally ensure compliance with the requirements of § . . . 745.113.
38. For the purposes of the Disclosure Rule, "Agent" means "any party *who enters into a contract with a seller or lessor* . . . for the purposes of selling or leasing target housing." 40 C.F.R. § 745.103 (emphasis added); C's Ex. 20.
39. It is black letter law that "there must be at least two [different] parties to a contract." Restatement (Second) of Contracts, § 9 (1981). *See also, e.g., United States v. Alaska S.S. Co.*, 491 F.2d 1147, 1154 (9th Cir. 1974)(one cannot contract with himself).
40. Thus, Respondents "Richard E. Keenhold, Jr., Richard E. Keenhold, Sr., and Danny

Keenhold trading as Keenhold Associates” as the lessors of the two premises identified as 606-608 Northampton Easton, Pennsylvania and Lot 29 Hill Top Acres, Saylorsburg, Pennsylvania, could not contract with themselves as “Keenhold Associates” to act as an “agent” in regard to those same properties.

41. A contract may be formed between a partner and a partnership, or between two or more persons acting as a unit and one or more but fewer than all of these persons acting singly or with other persons. Restatement (Second) of Contracts, § 11; 1-3 Corbin on Contracts § 3.1. The record, however, is void of any evidence of any contract between any of the Respondents as lessors on the one hand and Keenhold Associates as “agent” on the other for the purposes of leasing the six subject properties.¹³ See, C’s Ex. 15 and 16 (indicating by the response “N/A” that there is no partnership and/or management agreement among or between the individual Respondents and Respondent Keenhold Associates). Therefore, there is also no basis to conclude that Keenhold Associates acted as an “agent” in regard to the properties at 45 8th Street, 403C and 403D Lamp Light Estates, and 250 South Broadway.
42. Therefore, Respondent Keenhold Associates is found not liable as an Agent under 40 C.F.R. § 745.118(e) on Counts 1A-28A of the Complaint for failing to ensure that the Respondent Lessors performed the lead-paint disclosure activities required of them under 40 C.F.R. § 745.118(e) or performing such activities in connection with Leases 1-7 itself.

DETERMINATION OF CIVIL PENALTY AMOUNT

43. Section 22.17(c) of the Consolidated Rules of Practice provides in pertinent part that upon issuing a default “[t]he relief proposed in the complaint . . . shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.” 40 C.F.R. § 22.17(c).
44. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and the Disclosure Rule, 40 C.F.R. Part 745, Subpart F, authorizes the assessment of a civil penalty under 16 of TSCA, 15 U.S.C. § 2615, of up to \$11,000 for each violation as adjusted by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.
45. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that the following

¹³In fact, the seven lease agreements wherein “Keenhold Associates, PTR” is repeatedly identified as “the Owner” of the property directly contradict the allegation that Keenhold Associates was acting in the capacity of an Agent in regard thereto and instead suggest that the Respondents were acting in their capacities as owners/lessors at the time the leases were entered into and merely “trading as” Keenhold Associates while doing so.

factors be considered in determining the amount of any penalty assessed under Section 16: the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other such matters as justice may require.

46. EPA has issued guidelines for penalties under TSCA titled “Section 1018 - Disclosure Rule Enforcement Response Policy,” dated February 2000. C’s Ex. 22.

47. Having found that Respondents Richard E. Keenhold, Sr., Richard E. Keenhold, Jr. and Danny Keenhold, individually, jointly, and/or in certain instances jointly while “trading as Respondent Keenhold Associates,” violated TSCA in a total of 28 instances, I have determined that the aggregate penalty of \$20,755 proposed in the Complaint, is the appropriate civil penalty to be assessed against the Respondents in that it is neither clearly inconsistent with the record of the proceeding nor clearly inconsistent with the Act.¹⁴

48. In doing so, I have taken into account the nature, circumstances, extent, and gravity of the violations and, with respect to the Respondents, the ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other such matters as justice may require, which are all of the factors identified by Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2). I have also considered the above referenced guidelines.¹⁵

¹⁴Except in regard to Counts 6/6A, 7/7A, 13/13A, 14/14A, 20/20A, 21/21A, 27/27A and 28/28A where the Complaint identified Keenhold Associates as both the lessor and agent of the subject premises, EPA proposed that the single penalty it calculated for each count of violation based upon its circumstance and extent, *etc.*, be imposed against the lessor and agent “jointly and severally.” *See*, Complaint at 20. Thus, there is no reason to reduce the proposed penalty in light of Respondent Keenhold Associates being found not liable in the capacity of an “agent” for the violations found herein. In addition, following Agency Guidance, for the purposes of the Complaint, EPA rounded off its aggregate proposed penalty to the nearest unit of \$100 *i.e.* to \$20,800. *See*, Complaint at 21, n. 1. In assessing the penalties herein among the various Respondents and the numerous counts, for the sake of clarity, I have not rounded off the penalties.

¹⁵The Prehearing Order issued in this case gave Respondents the opportunity to submit a statement explaining why the proposed penalty should be reduced or eliminated, and particularly to submit any documentation which would evidence inability to pay the proposed penalty. *See*, Prehearing Order dated September 10, 2007. As indicated above, to date Respondents have chosen not to respond to that Order. The mere fact that the partnership, Respondent Keenhold Associates, under which the individual male Keenhold Respondents trade, has filed for bankruptcy under Chapter 11 does not by itself evidence to me its inability or that of the individual Respondents to pay
(continued...)

49. In assessing this penalty, I find persuasive the rationale for the calculation of the proposed penalties set forth in the Complaint filed in this proceeding and incorporate such rationale by reference into this Order.

50. Therefore, the following penalties are imposed against the Respondents found liable herein:

A. **Respondent Richard E. Keenhold, Jr.**, as the lessor of the premises identified as 45 8th Street, Wind Gap, Pennsylvania, is individually assessed for the violations found in relation to that property and Lease #1 as follows:

Count 1 (violation of 40 C.F.R. § 745.113(b)(1))	-	\$1,547
Count 8 (violation of 40 C.F.R. § 745.113(b)(2))	-	\$ 774
Count 15 (violation of 40 C.F.R. § 745.113(b)(3))	-	\$ 258
Count 22 (violation of 40 C.F.R. § 745.113(b)(4))	-	<u>\$ 516</u>
Total:		\$3,095

B. **Respondent Richard E. Keenhold, Jr.**, as the lessor of the premises identified as 403C Lamp Light Estates, Brodheadsville, Pennsylvania, is individually assessed for the violations found in relation to that property and Lease # 3 penalties as follows:

Count 3 (violation of 40 C.F.R. § 745.113(b)(1))	-	\$1,547
Count 10 (violation of 40 C.F.R. § 745.113(b)(2))	-	\$ 774
Count 17 (violation of 40 C.F.R. § 745.113(b)(3))	-	\$ 258
Count 24 (violation of 40 C.F.R. § 745.113(b)(4))	-	<u>\$ 516</u>
Total:		\$3,095

C. **Respondent Richard E. Keenhold, Jr.**, as the lessor of the premises identified as 403D Lamp Light Estates, Brodheadsville, Pennsylvania, is individually assessed for the violations found in relation to that property and Leases #s 4 and 5 penalties as follows:

Count 4 (violation of 40 C.F.R. § 745.113(b)(1))	-	\$1,320
Count 5 (violation of 40 C.F.R. § 745.113(b)(1))	-	\$1,547
Count 11 (violation of 40 C.F.R. § 745.113(b)(2))	-	\$ 660
Count 12 (violation of 40 C.F.R. § 745.113(b)(2))	-	\$ 774
Count 18 (violation of 40 C.F.R. § 745.113(b)(3))	-	\$ 220

¹⁵ (...continued)

the penalty amount imposed herein, especially since such bankruptcy provides for reorganization rather than liquidation of a business' assets so that the business continues existing successfully.

Count 19 (violation of 40 C.F.R. § 745.113(b)(3))	-	\$ 258
Count 25 (violation of 40 C.F.R. § 745.113(b)(4))	-	\$ 440
Count 26 (violation of 40 C.F.R. § 745.113(b)(4))	-	<u>\$ 516</u>
Total:		\$5,735

Total Penalties Imposed Against Respondent Richard E. Keenhold, Jr. Individually - \$11,925

- D. **Respondents Richard E. Keenhold Jr. and Danny Keenhold**, as tenants in common/lessors of the premises identified as 250 South Broadway, Wind Gap, Pennsylvania, are jointly and severally assessed for the violations found in relation to that property and Lease # 2 penalties as follows:

Count 2 (violation of 40 C.F.R. § 745.113(b)(1))	-	\$1,547
Count 9 (violation of 40 C.F.R. § 745.113(b)(2))	-	\$ 774
Count 16 (violation of 40 C.F.R. § 745.113(b)(3))	-	\$ 258
Count 23 (violation of 40 C.F.R. § 745.113(b)(4))	-	<u>\$ 516</u>
Total:		\$3,095

Total Penalties Imposed Against Respondents Richard E. Keenhold, Jr. and Danny Keenhold, jointly and severally, - \$3,095

- E. **Respondents Richard E. Keenhold, Jr., Richard E. Keenhold, Sr., and Danny Keenhold t/a Respondent Keenhold Associates**, as the co-owners of the premises identified as 606-608 Northampton Street, Easton, Pennsylvania, are jointly and severally assessed for the violations found in relation to that property and Lease # 6 penalties as follows:

Count 6 (violation of 40 C.F.R. § 745.113(b)(1))	-	\$1,547
Count 13 (violation of 40 C.F.R. § 745.113(b)(2))	-	\$ 774
Count 20 (violation of 40 C.F.R. § 745.113(b)(3))	-	\$ 258
Count 27 (violation of 40 C.F.R. § 745.113(b)(4))	-	<u>\$ 516</u>
Total:		\$3,095

- F. **Respondents Richard E. Keenhold, Jr., Richard E. Keenhold, Sr., and Danny Keenhold t/a Respondent Keenhold Associates**, as the co-owners of the premises identified as Lot 29 Hill Top Acres, Saylorsburg, Pennsylvania, are jointly and severally assessed for the violations found in relation to that property and Lease # 7 penalties as follows:

Count 7 (violation of 40 C.F.R. § 745.113(b)(1))	-	\$1,320
Count 14 (violation of 40 C.F.R. § 745.113(b)(2))	-	\$ 660

Count 21 (violation of 40 C.F.R. § 745.113(b)(3))	-	\$ 220
Count 28 (violation of 40 C.F.R. § 745.113(b)(4))	-	\$ 440
Total:		\$2,640

Total Penalties Imposed Against Respondents Richard E. Keenhold, Jr., Richard E. Keenhold, Sr., and Danny Keenhold t/a Respondent Keenhold Associates, jointly and severally - \$5,735.

ORDER

1. For failing to comply with the Prehearing Order and Order to Show Cause, as enumerated above, Respondents are hereby found in **DEFAULT**.

2. Respondent Richard E. Keenhold, Jr. individually is found liable for 16 violations of Section 409 of Toxic Substances Control Act, 15 U.S.C. § 2689, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and the Federal regulations promulgated thereunder, codified at 40 C.F.R. Part 745, Subpart F, and is assessed a civil administrative penalty in the amount of \$11,925 therefor.

3. Respondents Richard E. Keenhold, Jr. and Danny Keenhold are found jointly and severally liable for four (4) violations of Section 409 of Toxic Substances Control Act, 15 U.S.C. § 2689, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and the Federal regulations promulgated thereunder, codified at 40 C.F.R. Part 745, Subpart F, and are jointly and severally assessed a civil administrative penalty in the amount of \$3,095 therefor.

4. Respondents Richard E. Keenhold, Jr., Richard E. Keenhold, Sr., and Danny Keenhold, co-partners, t/a Respondent Keenhold Associates are found jointly and severally liable for eight (8) violations of Section 409 of Toxic Substances Control Act, 15 U.S.C. § 2689, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and the Federal regulations promulgated thereunder, codified at 40 C.F.R. Part 745, Subpart F, and are jointly and severally assessed a civil administrative penalty in the amount of \$5,735 therefor.

5. Respondent Rosalie Keenhold is found not to be liable in this action.

6. Payment of the full amount of these civil penalties shall be made within thirty (30) days after this Initial Decision becomes a final order under 40 C.F.R. § 22.27(c), as provided below. Payment shall be made by submitting a certified or cashier's checks in the amount of the penalties assessed, payable to "Treasurer, United States of America," and mailed to:

U.S. Environmental Protection Agency

**Fines and Penalties, Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000**

7. A transmittal letter identifying the subject case and EPA docket number as well as Respondents' name and address, must accompany the checks.
8. If Respondents fail to pay the penalties within the prescribed statutory period after entry of this Order, interest on the penalties may be assessed. *See*, 31 U.S.C. § 3717; 40 C.F.R. § 13.11.
9. Pursuant to 40 C.F.R. §22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties and without further proceedings unless (1) a party moves to reopen the hearing within twenty (20) days after service of this Initial Decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this Initial Decision is served upon the parties; or (3) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision, pursuant to 40 C.F.R. § 22.30(b).

Susan L. Biro
Chief Administrative Law Judge

Dated: December 4, 2007
Washington, D.C.

In the Matter of Keenhold Associates, Richard E. Keenhold, Sr.,
Richard Keenhold, Jr., Rosalie Keenhold and Danny Keenhold,
Respondents
Docket No. TSCA-03-2007-0084

CERTIFICATE OF SERVICE

I certify that the foregoing **Default Order And Initial Decision**, dated December 4, 2007, was sent this day in the following manner to the addressees listed below.

Maria Whiting-Beale
Legal Staff Assistant

Dated: December 4, 2007

Original And One Copy By Pouch Mail To:

Lydia A. Guy
Regional Hearing Clerk (3RC00)
U.S. EPA
1650 Arch Street
Philadelphia, PA 19103-2029

Copy By Pouch Mail To:

Donzetta Thomas, Esquire
Assistant Regional Counsel (3RC30)
U.S. EPA
1650 Arch Street
Philadelphia, PA 19103-2029

Copy By Certified Mail Return Receipt To:

Richard E. Keenhold, Jr.
Keenhold Associates
215-A West 8th Street
Wind Gap, PA 18091